

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONNIE THERESA CHEVERILLA,
Plaintiff

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. 5:16-cv-00875-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff Jonnie Theresa Cheverilla (“Plaintiff”) filed a complaint seeking review of Defendant Commissioner of Social Security’s (“Commissioner”) denial of her application for Disability Insurance Benefits (“DIB”) and Social Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkt. 11, 12] and briefs addressing disputed issues in the case [Dkt. 17 (“Pltf.’s Br.”) & Dkt. 18 (“Def.’s Br.”)]. The Court has taken the parties’ briefing under submission without oral argument. For the reasons set forth below, the Court affirms the decision of the ALJ and orders judgment entered accordingly.

II. ADMINISTRATIVE DECISION UNDER REVIEW

On March 6, 2013, Plaintiff filed an application for DIB, alleging that she became disabled as of July 11, 2012. On March 7, 2013, Plaintiff filed an

1 application for SSI, alleging the same disability onset date. [Dkt. 20, Administrative
2 Record (“AR”) 25, 187-194.] The Commissioner denied her initial claim for
3 benefits and then denied her claim upon reconsideration. [AR 25, 125, 134.] On
4 August 21, 2014, a hearing was held before Administrative Law Judge (“ALJ”)
5 Mason D. Harrell, Jr. [AR 41-72.] On October 31, 2014, the ALJ issued a decision
6 denying Plaintiff’s request for benefits. [AR 25-39.]

7 Applying the five-step sequential evaluation process, the ALJ found that
8 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1) 416.920(b)-(g)(1).
9 At step one, the ALJ concluded that Plaintiff has not engaged in substantial gainful
10 activity since July 11, 2012, the alleged onset date. [AR 27.] At step two, the ALJ
11 found that Plaintiff suffered from the following severe impairments: diabetes
12 mellitus, left shoulder disorder, carpal tunnel syndrome, and obesity. [AR 27 (citing
13 20 C.F.R. §§ 404.1520, 416.921; Social Security Rulings (“SSR”) 85-28, 96-3P, 96-
14 4P.)] Next, the ALJ determined that Plaintiff did not have an impairment or
15 combination of impairments that meets or medically equals the severity of one of
16 the listed impairments. [AR 29 (citing 20 C.F.R. §§ 404.1520(d), 404.1525,
17 404.1526, 416.920(d), 416.925, 416.926).]

18 The ALJ found that Plaintiff had the following residual functional capacity
19 (RFC):

20 [S]edentary work as defined in 20 CFR 404.1567(b) and
21 416.967(b). Specifically, the claimant can occasionally
22 [and frequently] lift and carry 10 pounds...she can sit for
23 six hours in an eight-hour day; she can stand and walk two
24 hours in an eight-hour day; she can occasionally bend at
25 the waist and occasionally climb stairs; she must avoid
climbing ladders and lifting her left arm above shoulder-
level; she can use her hands up to frequently [sic]; and she
must avoid driving and working in environments exposed
to dangerous machinery.

26 [AR 30.] Applying this RFC, the ALJ found that Plaintiff was able to perform her
27 past relevant work as a personnel clerk, receptionist, and personnel recruiter and,
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thus, is not disabled. [AR 33.] Plaintiff sought review from the Appeals Council, which denied review. [AR 1-7.]

III. GOVERNING STANDARD

Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to determine if: (1) the Commissioner's findings are supported by substantial evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see also Hoopai*, 499 F.3d at 1074.

IV. DISCUSSION

Plaintiff now appeals the decision of the ALJ, and raises two related issues. First, Plaintiff contends that the ALJ erred by failing to articulate valid reasons for discounting the opinions of State agency physicians, Dr. James Wright, M.D. and Dr. Jeanine Kwun, M.D. [Pltf.'s Br. at 4-7.] Second, she argues that the ALJ's error was not harmless, because if the ALJ fully credited the State agency physicians' opinions, he would have reached a different disability determination. [Pltf.'s Br. at 7.]

In evaluating medical opinions, the case law and regulations distinguish among the opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who examine, but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant (nonexamining physicians). *See* 20 C.F.R. §§ 404.1502, 404.1527, 416.902, 416.927; *see also Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Generally, the opinions of treating physicians are given greater weight than those of other physicians, because treating physicians are employed to cure and therefore have a greater opportunity to know and observe the claimant. *Smolen v. Chater*, 80 F.3d

1 1273, 1285 (9th Cir. 1996). However, an ALJ is not bound to accept the opinion of
2 a treating physician. The ALJ may give less weight to a treating physician's opinion
3 that conflicts with other medical evidence if the ALJ provides specific and
4 legitimate reasons for discounting the opinion supported by substantial evidence in
5 the record. *See Lester*, 81 F.3d at 830-31.

6 Although ALJs "are not bound by any findings made by [nonexamining] State
7 agency medical or psychological consultants, or other program physicians or
8 psychologists," ALJs must still "consider findings and other opinions of State
9 agency medical and psychological consultants and other program physicians,
10 psychologists, and other medical specialists as opinion evidence, except for the
11 ultimate determination about whether [a claimant is] disabled" because such
12 specialists are regarded as "highly qualified . . . experts in Social Security disability
13 evaluation." 20 C.F.R. §§ 404.1527(e)(2)(i), 416.927(e)(2)(i). "Unless a treating
14 source's opinion is given controlling weight, the [ALJ] must explain in the decision
15 the weight given to the opinions of a State agency medical or psychological
16 consultant or other program physician, psychologist, or other medical specialist."
17 20 C.F.R. §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii); *see also* SSR 96-6p
18 ("Findings...made by State agency medical and psychological consultants and other
19 program physicians and psychologists regarding the nature and severity of an
20 individual's impairment(s) must be treated as expert opinion evidence of
21 nonexamining sources," and ALJs "may not ignore these opinions and must explain
22 the weight given to these opinions in their decisions.").

23 Here, Plaintiff's treating physician, Dr. Leah Patrick, D.O., opined that
24 Plaintiff should avoid bending, twisting, heavy lifting, and driving. [AR 33, 455.]
25 State agency physicians, Dr. Wright and Dr. Kwun, reviewed Plaintiff's medical
26 records both at the initial level [AR 77, 86] and at the reconsideration level [AR
27 100, 112]. Both State agency physicians concluded that Plaintiff "could perform
28 light work with limitations in front, lateral, and overhead reaching with her left

1 arm.” [AR 33, 77, 86, 100, 112.] In regards to her left shoulder impairment,
2 Plaintiff testified at the hearing that she can lift eight pounds and that she can raise
3 her left arm to head level but it “pinches” when she does so.¹ [AR at 47, 51-52.]
4 Plaintiff contends that the ALJ erred by failing to incorporate the State agency
5 physicians’ front and lateral reaching limitations into Plaintiff’s RFC. [Pltf.’s Br. at
6 4-7.] The Court disagrees.

7 In the ALJ’s decision, he considered Dr. Wright’s and Dr. Kwun’s opinions
8 and stated appropriate reasons for giving them less weight. *See* 20 C.F.R. §§
9 404.1527(e)(2) (ii), 416.927(e)(2)(ii); *see also* SSR 96-6p. Specifically, the ALJ
10 considered Dr. Wright’s and Dr. Kwun’s finding that Plaintiff had front, lateral, and
11 overhead reaching limitations for her left arm, but relied instead on the opinion of
12 Plaintiff’s treating physician, Dr. Patrick. [AR 33.] Dr. Patrick opined that Plaintiff
13 should avoid heavy lifting, but did not find *any* left arm reaching limitations. [AR
14 455.]

15 The ALJ also cited other medical evidence to support his assessment of
16 Plaintiff’s functioning. [AR 33.] The ALJ noted that Plaintiff’s treatment records
17 showed that the pain caused by Plaintiff’s left shoulder disorder was controlled with
18 conservative treatment, including use of homemade ointment and ibuprofen. [AR
19 32, 437, 454-455.] The Ninth Circuit has held that “impairments that can be
20 controlled effectively with medication are not disabling for the purpose of
21 considering eligibility for [] benefits.” *Warre v. Comm’r of Soc. Sec. Admin.*, 439
22 F.3d 1001, 1006 (9th Cir. 2006).

23 In sum, the ALJ assigned greater weight to Dr. Patrick’s treating physician
24 opinion than those of the state agency non-examining physicians, and additionally
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26 ¹ Despite the ALJ’s determination that Plaintiff’s testimony is not fully credible (a
27 finding that Plaintiff does not challenge), the ALJ accommodated Plaintiff’s
28 subjective complaints by going beyond the recommendation of her treating
physician and State agency physicians and limiting Plaintiff to *sedentary* work.

1 discussed specific medical record evidence that supported Dr. Patrick's less
2 restrictive opinion. The ALJ thereby resolved any conflicts in the medical evidence
3 concerning Plaintiff's left shoulder impairment. [AR 33]; *see Thomas v. Barnhart*,
4 278 F.3d 947, 956-57 (9th Cir. 2002).

5 The Court's review of the record shows that the ALJ's reasons for
6 discounting the opinions of the State agency physicians are supported by substantial
7 evidence. Accordingly, remand is not warranted on this basis.² *See Molina v.*
8 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

9 **V. CONCLUSION**

10 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
11 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

12
13 **IT IS SO ORDERED.**

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15 DATED: January 09, 2017

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18 GAIL J. STANDISH
19 UNITED STATES MAGISTRATE JUDGE
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26 _____
27 ² Since the Court finds that the ALJ did not err in assigning less weight to Dr.
28 Wright's and Dr. Kwun's opinions, the Court elects not to address the harmless
error argument.